BEFORE THE FOREST PRACTICES APPEALS BOARD
STATE OF WASHINGTON

SNOHOMISH COUNTY, Appellant, v. STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES; DEPARTMENT OF ECOLOGY and FOREST PRACTICES BOARD; GOLDEN SPRING INTERNATIONAL, INC.; TAT (USA) CORPORATION; and WEYERHAEUSER COMPANY, Respondents.	FPAB No. 89-12
WASHINGTON ENVIRONMENTAL COUNCIL, Appellant, v. STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES; DEPARTMENT OF ECOLOGY and FOREST PRACTICES BOARD; GOLDEN SPRING INTERNATIONAL, INC.; TAT (USA) CORPORATION; and WEYERHAEUSER COMPANY, Respondents.	FPAB No. 89-13

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Forest Practices Appeals Board, William A. Harrison, Adminstrative Apeals Judge, presiding, and Board Members Norman L. Winn, Chairman, Claudia K. Craig and Dr. Martin R. Kaatz.

The matter is an appeal from Department of Natural Resource's approval of forest practices applications by Golden Spring International, Inc., and TAT (USA) Corporation.

Appearances were as follows:

1. Snohomish County by Edward E. Level and Traci M. Goodwin, Deputy Prosecuting Attorneys.

2. Washington Environmental Council by Michael W. Gendler and Jean M. Mischel, Attorneys at Law.

3. Department of Natural Resources by Kathryn L. Gerla, Assistant Attorney General.

4. Forest Practices Board by Partricia Hickey O'Brien, Assistant Attorney General.

5. Department of Ecology by Ceil Buddeke, Assistant Attorney General.

6. TAT (USA) Corporation by William F. Lenihan and James McAteer, Attorneys at Law.

7. Golden Spring International, Inc., by Bart G. Irwin, Stephen E. Oliver and George L. Wood, Jr., Attorneys at Law.

8. Weyerhaeuser Company by Mark S. Clark and Ann Forest Burns, Attorneys at Law.

The hearing was conducted at Everett from September 11 through 15, and at Seattle from September 18 through 22 and September 25 through 27, 1989. In all, thirteen days were devoted to the hearing on the merits.

Reporter Gene Barker & Associates provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. The Board viewed the site of the proposal in the company of Judge Harrison and the parties. From testimony heard and exhibits examined, the Forest Practices Appeals Board makes these:

FINDINGS OF FACT

I.

This case arises in Snohomish County in the vicinity of Lake Roesiger. The area is one of low elevation (below 1,000 feet m.s.l.) and fertile forest soils. The old growth timber was harvested from the areas in the early part of this century. The main old growth harvest was from 1925 to the late '30's. During that harvest a saw mill was built on Lake Roesiger, which was used as a mill pond for log storage.

II.

In 1949, Sound Timber Company sold lands around Lake Roesiger to Weyerhaeuser Company. Weyerhaeuser has managed its land for forestry, and has harvested parts of the second growth timber nearly every year since 1970.

III.

Over the years Lake Roesiger shorelines have become built up with both summer and permanent homes. Homes now occupy nearly all of Lake Roesiger's waterfront. The homeowner's property extends back from the lake. It is abutted on its upland boundaries by timber company ownership.

IV.

Lake Roesiger has major algal blooms during the summer. Its water quality is characterized by low alkalinity rendering it sensitive to nutrient loading. Nutrients (such as nitrogen and phosphorus) stimulate algal growth. Because of this, both Snohomish County and the State Department of Ecology have supported a study to determine the sources of nutrient loading that contribute to the Lake's stagnation.

V.

In early 1989, Weyerhaeuser Company sold land west of Lake Roesiger, totaling 2,600 acres to Golden Spring International, Inc. (GSI). At the same time it sold land east of Lake Roesiger, totaling 5,200 acres to TAT (USA) Corporation (TAT). The GSI property contained some 1,575 acres of merchantable second growth timber. The TAT property contained some 3,000. A network of logging roads was in place on both properties.

VI.

The GSI property encompasses much of the western slope of the Lake Roesiger basin and extends westward to the area drained by the West Fork of Woods Creek (the upper reaches of which are known as Carpenter Creek). The TAT property encompasses much of the eastern slope of the Lake Roesiger basin and extends eastward to the area drained by Woods Creek. The West Fork of Woods Creek and Woods Creek converge northeast of Monroe before entering the Skykomish River. Lake Roesiger drains by Roesiger Creek to Woods Creek.

VII.

In March, 1989, TAT, under approvals issued by the State Department of Natural Resources (DNR) clearcut approximately 458 acres of its holdings.[1] Approximately 90 acres was in the Lake Roesiger watershed and the balance in the watershed of Woods Creek. Cutting was conducted to the property line of adjacent homeowners. Because these applications were classified as Class III, the approval of DNR was made without evaluation as to whether or not a detailed statement must be prepared pursuant to the State Environmental Policy Act (SEPA), chapter 43.21C RCW. Neither was an inter-disciplinary team (ID Team) formed to advise DNR under the Timber-Fish-Wildlife agreement negotiated among persons and entities interested in forestry.

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[1] Application numbers FP1910528 and FP 1910529.

VIII.

This clearcutting in the Lake Roesiger watershed raised concerns among Lake Roesiger residents, Snohomish County and Department of Ecology. These were comunicated to DNR.

IX.

On May 2, 1989, GSI filed four applications (known by the last three digits of their numbers as 713, 716, 717 and 750) with DNR seeking approval to clearcut approximately 1,175 acres. On May 17, 1989, TAT filed two applications (known as 776 and 777) with DNR seeking approval to clearcut approximately 395 acres.

X.

The GSI land is zoned R-5 (residential, one dwelling unit per 5 acres). The TAT property is zoned Forestry (one dwelling unit per 20 acres). Each application specifies that reforestation will occur by planting or seeding Douglas fir or similar conifer species. DNR consulted with Snohomish County over the prospect for urbanization of the area within 10 years which, if likely, could lead to County responsibility for SEPA compliance. See RCW 76.09.070 and WAC 222-16-050(2)(b). Such a determination also exempts the lands from reforestation. See WAC 222-34-050. Snohomish County did not request a determination that the lands at issue would urbanize within 10 years. Based upon this and the lack of sewers and other infrastructure near Lake Roesiger, DNR chose not to classify the six May applications as Class IV - General under WAC 222-16-050(2).

XI.

The lands in question are not known to contain a breeding pair or nest or breeding grounds of any threatened or endangered species. For this reason and because the six applications of GSI and TAT did not contain any of the five forest practices enumerated at WAC 222-16-050(1) as Class IV - Special, DNR classified the six applications as Class III under WAC 222-16-050(5). Having so classified the applications, DNR did not evaluate whether or not a detailed statement (EIS) must be prepared pursuant to SEPA.

XII.

Next, pursuant to DNR procedure with regard to Class III applications, DNR applied principles of the Timber-Fish-Wildlife agreement to identify "priority" issues. From these an ID Team of persons with technical training was assembled to advise DNR on the applications. The priority issue identified by DNR on GSI's applications was "Harvest - Unstable Soils." The priority issues identified by DNR on TAT's applications were "Water Quality" and "Extreme Fire Hazard."

XIII.

On May 18, 1989, an ID Team of five technical core members and twenty observers representing the landowners, Snohomish County and others walked portions of the site. From this, the ID Team gave advice which was placed in a DNR written report. There remained, however, an uncertainty as to whether these applications would be

followed by others. Therefore, DNR asked GSI and TAT to convene a public meeting in which they would discuss their present and future logging plans. These were requested by DNR in the spirit of the TFW agreement largely in the hope of avoiding future conflict, but not as part of the ID Team procedure nor necessarily for the action about to the taken on the pending permits. Apparently DNR's view of the meetings therefore differed from the understanding of Snohomish County and others who believed the meetings would allow public comment that DNR would consider in acting upon the applications.

XIV.

The GSI meeting was held on June 7, 1989, at Everett. Officials of GSI declared then that it was GSI's intent to log all 1,575 acres of merchantable timber in two years. The TAT meeting was held on June 8, 1989, at Everett. Officials of TAT declared then that it was TAT's intent to log all 3,000 acres of merchantable timber in two years. The applications at issue were therefore the first acreages within these totals. The result of each meeting was a listing of concerns about proposed operations.

XV.

In pursuit of its understanding, Snohomish County and others submitted comments on or after June 15 to DNR concerning the presentations at the two meetings in Everett. In pursuit of its understanding, DNR officials had by then, however, already met with

GSI and TAT officials on June 12, 1989, to discuss the written ID Team report and possible permit approval. Two time extensions had been granted by the applicants to DNR which expired on June 19, 1989. Had the DNR not acted by June 19, 1989, the original applications without conditions would have been automatically approved. On June 19, 1989, DNR approved with conditions the six GSI and TAT forest practices applications at issue.

XVI.

The DNR approval of the applications was made with numerous conditions based upon DNR's investigations including the ID Team procedure. The first of these conditions "deleted" from the application the area within the Lake Roesiger basin. This was defined with regard to the hydrographic boundary so that all lands draining toward the Lake were excluded. The hydrographic boundary was marked on the ground. The "deletion" constituted a denial without prejudice to re-applying at a future date. The denial deleted a total of approximately 640 acres so that GSI's applications for 1,175 acres was approved for approximately 725 acres and TAT's applications for 395 acres was approved for approximately 205 acres.

XVII.

Additional conditions of DNR's approval were in part set by DNR and were in part volunteered by the landowner. These included 25 foot buffers or leave areas to either side of type 4 and 5 streams. See

e.g. Exhibit R-21 herein, (716), General Condition 8. A type 5 stream may be intermittent and the width between its ordinary high water mark is less than two feet. A type 4 stream exceeds two feet in width between ordinary high water marks, and has significance mainly in protecting downstream water quality where significant fish use may occur. See WAC 222-16-030(3), (4) and (5). No machinery is allowed within these buffers under the permit conditions. However, merchantable timber may be removed with careful yarding. A similar buffer, known as a riparian management zone, was required along Type 3 streams or ponds. See, e.g. Exhibits R-21, herein (716), General Condition 10. More leave trees are required than for type 4 or 5 streams by this condition. A type 3 water is one where significant fish use may occur. See WAC 222-16-030(3).

XVIII.

On the GSI applications, conditions also require upland management areas in the vicinity of selected type 3 waters. See, Exhibit R-21, herein (713 and 716). A similar requirement will be imposed upon a beaver pond area in 713 previously thought to be deleted by the Lake Roesiger hydrographic boundary, but later found to lie outside the boundary. The conditions require consultation with the State Department of Wildlife as to how many and what type of leave trees should be included. See, Exhibit R-21, herein (716), General Condition 7.

XIX.

Also on GSI applications, certain steep areas are subject to operating conditions. On Exhibit R-21, herein, (717) a buffer of up to 50 feet is required along a type 5 stream in a deep valley. Specific Condition 3. On Exhibit R-21 (750) no ground based machinery will be allowed west of the road where slopes descend steeply to a type 5 water. Specific Condition 2.

XX.

On the TAT application, additional slash abatement may be required so that no more than 800 contiguous acres of slash five years old or younger are left. Exhibit R-21, herein, (777) Specific Condition 2. See WAC 332-24-385 setting 800 acres as a threshold of extreme fire hazard.

XXI.

Following the applications' approval by DNR, Snohomish County commenced a lawsuit against DNR and the applicants in Thurston County Superior Court. The Court heard, upon affidavits, Snohomish County's motion for a temporary restraining order and granted same on June 29, 1989. The temporary restraining order lasted until July 13, 1989. On July 10, 1989, Snohomish County filed an appeal before this Board from the granting of the applications. By further order entered July 13, 1989, the Court extended its temporary restraining order until July 18, 1989. On July 18, 1989, William A. Harrison, Administrative

Appeals Judge of this Board heard, upon affidavits, Snohomish County's motion to suspend these application approvals pending this Board's final decision. Judge Harrison granted that motion and the motion of TAT to bring the matter on for expedited hearing before the full Board. On July 20, 1989, the court dismissed the Snohomish County action.

XXII.

The evidence adduced at hearing in this matter can be categorized into five major subject headings. These concern the effect of the proposed logging on: 1) wetlands, 2) streams and fisheries, 3) wildlife, 4) county roads, and 5) fire danger.

XXIII.

Wetlands. Snohomish County has not adopted a wetland protection ordinance. Were such an ordinance adopted it would likely govern the protection of wetlands from building development. However, a draft of such an ordinance provides for a buffer of 25 feet from the limit of wetlands, outward. This is in contrast to DNR's buffers, as prescribed for these forest practices, which protect, generally, to the limit of the wetland. In addition the draft County proposal would not allow buffer disturbance while DNR's buffers allow removal of merchantable timber and careful yarding out of the buffer. We find that the DNR conditions are protective of wetlands in this case. Such buffers on type 5 streams, predominant at this site, extend beyond the

requirements of the forest practice regulations. See WAC 222-30-020(5) and (7).

XXIV.

Streams and Fisheries. Carpenter Creek, which drains the area of GSI's proposed logging, contains habitat which supports coho salmon, steelhead, rainbow and cutthroat trout. Downstream reaches contain pink, chum, and chinook salmon. The same is true of Woods Creek up to a natural waterfall. The Department of Fisheries plants coho salmon above the waterfall. The main stems of Carpenter - West Fork Woods and Woods Creeks are adjacent or near to some of the proposed cuts and tributaries to these streams are on the site.

XXV.

Stream temperature is not likely to be affected significantly by the proposed logging.

XXVI.

The soil in the areas to be logged is resilient. Soil is unlikely to be compacted so as to increase runoff in that way, because of low impact logging equipment. Both GSI and TAT propose the use of a "feller-buncher" which cuts the trees with a large scissors apparatus while holding it with a mechanical arm. The cut tree would then be yarded with rubber-tired skidders. Soil compaction is likey to be minimized by these operations.

XXVII.

There is likely to be a 20% increase in water yield from the site, due to the proposed logging, for 5 years after harvest. In five years the highly productive soils will grow reproduction trees to a height of at least 5 to 6 feet. However, during the 5 years the absence of forest canopy and evapotranspiration by trees will account for the greater water yield.

XXVIII.

The soil at the site is absorptive. The increased water yield will leave the site chiefly by absorption into the soil and subterranean movement to stream beds. It is unlikely that direct surface runoff of rainfall will cause sedimentation to streams on or off-site. Moreover, the subterranean water yield may lengthen the duration of peak winter stream flows, but it is unlikely to cause bank erosion or sedimentation. The evapotranspiration of trees being greatest in summer, it is possible that low summer stream flows would be increased by the logging. Despite this, there is not likely to be any measurable flow increase, as a result of the proposed logging, at the convergence of the West Fork of Woods Creek and Woods Creek.

XXIX.

Nutrient loading to streams from logging does not pose a threat of stagnation as may be the case with Lake Roesiger.

XXX.

The effects of this proposal, even cumulatively, considered with

prior clearcuts are not likely to cause significant sedimentation nor harm to fish habitat either in on-site streams or in Carpenter - West Fork Woods or Woods Creeks.

XXXI.

Wildlife. There may be some 100 common species of wildlife in or near the site. More species generally inhabit a clearcut than second growth forest, however. Moreover, the proposed logging is likely to leave viable populations of all species. Within some species, such as common songbirds, numbers of individuals are likely to decline. The same is true for Douglas squirrels. When trees regenerate numbers of these species will probably increase again. Within other species, such as deer and grouse, numbers of individuals are likely to increase. Deer density is quite likely to increase shortly after harvest and remain above second-growth deer densities for more than 20 years.

XXXII.

The concern for forest "fragmentation," by which scattered clearcuts may leave stands too isolated for wildlife utilization was not shown to be an adverse factor here. While the fragmentation concept has been applied in old growth habitat involving cavity nesting or other species, it was not shown that these operations, in low-land, second growth habitat, would result in any forest fragmentation posing significant harm to wildlife.

XXXIII.

The effects of this proposal, even cumulatively considered with prior clearcuts are not likely to cause significant harm to wildlife populations.

XXXIV.

County Roads. In 1988 Snohomish County began a "spot improvement" system to repair county roads in response to complaints filed. Some 400 complaints were filed in 1988 throughout the County. Only a few related to problems connected with forestry. The Lake Roesiger area has been subject to logging for many years, yet the road damage in that area is comparable to the rest of the County. It is not likely that the proposed logging will cause damage to county roads. Logging truck traffic has been routed off of the Lake Roesiger Road. It is not probable that logging truck traffic from the proposal will unduly congest county roads.

XXXV.

Fire Danger. With denial of the harvest plan in the Lake Roesiger hydrographic boundary, the clearcuts in question do not equal or exceed the 800 acre threshold for extreme fire hazard cited previously in WAC 332-24-385. If such an acreage arises, however, slash abatement procedures will be required. There is no plan to burn slash in these proposed operations. The proposed logging does not constitute a fire hazard.

XXXVI.

At the conclusion of the evidence, respondents GSI and TAT moved for dissolution of the order suspending these applications. Judge Harrison granted the motion with concurrence of all members of this Board.

XXXVII.

Any Conclusion of Law which is deemed a Finding of Fact, is hereby adopted as such. From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I.

Jurisdiction. As a threshold matter, the Department of Natural Resources (DNR) and the Forest Practices Board (FPB) have filed a pre-hearing motion in which they assert that we lack jurisdiction to review the consistency of forest practices regulations with the Forest Practices Act, chapter 76.09 RCW, and the State Environmental Policy Act, chapter 43.21C RCW when such regulations were applied in a permit action which is brought before us for review. We disagree. We hold that we have such jurisdiction in contested cases involving permit or enforcement actions.

II.

The challenge regarding our jurisdiction has been previously litigated and concluded by the Order of Dismissal entered by the Superior Court of Thurston County on July 20, 1989. That matter

concerned the same cause of action as here and involved most of the same parties, including the DNR and the FPB. Upon motion of plaintiff, Snohomish County, a Temporary Restraining Order was granted prior to the Dismissal. The Temporary Restraining Order recited that " . . . the FPAB does not have authority to consider the constitutional and rule validity questions raised in the plaintiff's complaint," and was entered on June 29, 1989, or 21 days before the action was dismissed. We were apprised of both that lawsuit and that order for the first time on the day after the order was entered. In direct succession we filed, through counsel from the Office of the Attorney General, a brief amicus curiae with the Thurston County Superior Court. In it, and by appearance of counsel, we requested that the Court forebear from exercising jurisdiction until the matter was heard in this forum. As friend of the court we advised that:

> Where, however, contested cases involve challenges to rules, the administrative tribunal should at least be given the initial opportunity to hear the facts, and interpret the rules and statutes to determine their applicability. If the quasi-judicial tribunal concludes that a particular rule is beyond the authority of an environmental statute which the board is called upon to interpret, then the agency likewise also ought to have the opportunity to rule, subject to de novo review in Superior Court.
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> Amicus Curiae Brief of Forest Practices Appeals Board, pp 7-8.

Thereafter, on July 20, 1989, the Court entered an Order of

Dismissal. That Order recited:

> " . . . that Snohomish County has an adequate administrative remedy of appeal to the FPAB on all issues and that the County has filed an appeal before the FPAB relating to all issues and primary jurisdiction lies with the Forest Practices Appeals Board."
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> Page 2, lines 12 through 18.

The Court, when fully advised, specifically expunged language from the proffered order which styled it a "partial" dismissal excepting "challenges to the validity of SEPA statutes and regulations and forest practices statutes and regulations." This Order of Dismissal constitutes a binding adjudication that we possess the jurisdiction at issue.

III.

Assuming, without conceding, that the Thurston County Superior Court's Order of Dismissal is not binding we also set forth our own conclusions concerning our jurisdiction.

IV.

First, the Forest Practices Appeals Board (FPAB) is an independent, quasi-judicial tribunal, of record, within the State Environmental Hearings Office.[2] RCW 76.09.210(1). The FPAB

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[2] The State Environmental Hearings Office is composed of four quasi-judicial boards which are independent of the agencies whose actions may be appealed. The boards are: 1) the Shorelines Hearings Board, 2) the Pollution Control Hearings Board, 3) the Forest Practices Appeals Board, and 4) the Hydraulics Appeals Board.

consists of three members appointed by the Governor with the advice and consent of the Senate. RCW 76.09.210(2). Members shall be qualified by experience and training in pertinent matters pertaining to the environment. One member shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. Id. Members may be removed by action of a tribunal of three judges of superior court designated by the Chief Justice of the Supreme Court. RCW 76.09.210(4).

V.

Second, the legislature has delegated to the FPAB, the responsibility to hear appeals by any county from DNR's approval of a forest practices application in that county. RCW 76.09.050(8). Similarly, the legislature has delegated to the FPAB the responsibility to hear the appeal of any person aggrieved by approval or disapproval of a forest practices application, RCW 76.09.220(8), or issuance of enforcement orders. RCW 76.09.080(2), RCW 76.09.090(3), and RCW 76.09.170.

VI.

Third, nothing within the authority delegated by the legislature confines the FPAB's review to DNR's compliance solely with forest practices regulations. To the contrary, the task of the DNR in carrying out permit actions includes the responsibility to assure

compliance with the Forest Practices Act. This is expressly stated in the context of this appeal by RCW 76.09.050(5):

> The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practice regulations. . . . (Emphasis added.)

Other appeals may similarly bring other portions of the Act before us. Our jurisdiction, on review of DNR's approval of the application, is equally inclusive of both the Forest Practices Act and its regulations under the authority granted us by RCW 76.09.050(8) and -220(8).

VII.

Next, jurisdiction to review the permit action for consistency with both the Forest Practices Act and the regulations necessarily results in jurisdiction to conclude upon whether a regulation at issue is beyond the authority of the Act. All is then reviewable in Superior Court. Were it not so, an invidious system of dual litigation would result in which a single permit would be measured against regulations in this forum and simultaneously measured against the Forest Practices Act in Thurston County Superior Court. Appeal from the FPAB could conceivably be to a different Superior Court. Applications to preserve the status quo during litigation could be filed in two or more forums. We see nothing which compels such a

result. Rather, our jurisdiction is tailored to grant relief on all but constitutional issues with a subsequent and orderly right to review in Superior Court.

VIII.

Lastly, we distinguish the contested case before us from the action authorized by RCW 34.04.070. That portion of the Administrative Procedure Act, and its successor RCW 34.05.570(2), provide for a declaratory judgment on the validity of a rule "when it appears that the rule or its threatened application interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner." This provision grants permission to bring a declaratory judgment petition, and the same must be brought exclusively in Thurston County Superior Court. Sim v. Parks and Recreation Department, 90 Wn.2d 378 (1978), Harvey v. Board of County Commissioners, 90 Wn.2d 473 (1978). In the terms adopted in Seattle v. Department of Ecology, 37 Wn. App 819 (1984) it is an appeal from "law making" as contrasted with "law applying." The Pollution Control Hearings Board determined that it lacked jurisdiction in Seattle v. Department of Ecology, a case challenging the validity of regulations adopted, but not yet applied. This appeal, by contrast, is a contestd case under RCW 34.04.090, et. seq. (RCW 34.05.410, et. seq.) of the Administrative Procedure Act which relates to "law applying." The appeal is from a permit approval

supported by specific regulations placed at issue. A challenge to an administrative rule when actually applied is not forbidden by RCW 34.04.070. See, Weyerhaeuser v. Department of Ecology, 86 Wn.2d 310 (1976) (Pollution Control Hearings Board declares a tax credit regulation invalid in the course of reversing denial, by Department of Ecology, of a tax credit certificate to Weyerhaeuser Company); Simpson Timber Company v. Olympia Air Pollution Control Authority, 87 Wn.2d 35 (1976) (Pollution Control Hearings Board declares regulations of the air pollution control authority to be statutorily preempted in appeal of a civil penalty issued pursuant to those regulations; State v. Rains, 87 Wn.2d 626 (1976) (Clallam County Superior Court invalidates a rule of the Public Disclosure Commission in an enforcement action for civil penalty by PDC against Mr. Rains); Bellevue v. Boundary Review Board, 90 Wn.2d 856 (1978) (Boundary Review Board reviews and upholds the validity of a timely filing rule in contested annexation); Frame Factory v. Department of Ecology, 21 Wn. App. 50 (1978) (Pollution Control Hearings Board declares valid a regulation of the Department of Ecology relating to removing a catalytic converter from an automobile in an appeal of civil penalty assessed under that regulation); Puget Sound Air Pollution Control Agency v. Kaiser Aluminum, 25 Wn. App. 273 (1980) (Pollution Control Hearings Board declares valid a regulation of the air pollution control agency against a claim that scienter is required by statute in appeal of a

civil penalty assessed under that regulation); Downtown Traffic Planning v. Royer, 26 Wn. App. 156 (1980) (King County Superior Court declares the validity of SEPA exemption regulation in an action challenging a Seattle proposal put in place under the exemption); Chemithon Corp. v. Puget Sound Air Pollution Control Agency, 31 Wn. App. 276 (1982) (Pollution Control Hearings Board declares the validity of a regulation of the air pollution control agency in appeal of a civil penalty assessed under that regulation); Kaiser Aluminum v. Pollution Control Hearings Board 33 Wn. App. 352 (1982) (Pollution Control Hearings Board declares valid a regulation of the air pollution control agency in an appeal of a civil penalty assessed udner that regulation); and Asarco, Inc. v. Puget Sound Air Pollution Control Agency, 112 Wn.2d 314 (1989) (Pollution Control Hearings Board declares valid regulations of the air pollution control agency and Department of Ecology in an appeal of a civil penalty assessed under the regulations.)

The Shorelines Hearings Board has similarly reviewed and ruled upon the validity of regulations relative to the Shoreline Management Act when placed at issue in appeals from the granting or denying of shoreline permits. See, Massey v. Island County, SHB No. 80-3, SAVE v. Koll Company, SHB No. 81-27, CFOG v. Skagit County, SHB No. 84-17, Friends of the Columbia Gorge v. Skamania County, SHB Nos. 84-57 and 84-60, Hastings v. Island County, SHB No. 86-27 and Risk v. Island County, SHB Nos. 86-49 and 50.

IX.

In summary, we have jurisdiction to review and determine whether a forest practices regulation, applied in support of permit or enforcement action on appeal before us, exceeds the statutory authority granted by the Forest Practices Act.

X.

Rule Validity. Appellant Snohomish County challenges the validity of WAC 222-16-050, a forest practices regulation which classifies those forest practices which are subject to the State Environmental Policy Act (SEPA). The regulation provides, in pertinent part:

> (1) "Class IV - special." Application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the state environmental policy act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.
>
> *(a) Aerial application of pesticides to an "area of water supply interest" as determined according to WAC 222-38-020(5)(i).
>
> (b) Harvesting, road construction, site preparation or aerial application of pesticides:
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> (i) On lands known to contain a breeding pair or the nest or breeding grounds of any threatened or endangered species; or
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> (ii) Within the critical habitat dsignated for such species by the United States Fish and Wildlife Service.
>
> (c) Widespread use of DDT or a similar persistent insecticide.
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> (d) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state

park, or any park of a local governmental entity, except park managed salvage of merchantable forest products.

*(e) Construction of roads, landings, rock quarries, gravel pits, borrow pits,and spoil disposal areas on slide prone areas as defined in WAC 222-24-020(6) when such slide prone areas occur on an uninterrupted slope above a Type 1, 2, 3 or 4 Water where there is potential for a substantial debris flow or mass failure to cause significant impact to public resources.

The regulation was promulgated by the Forest Practices Board.[3]

XI.

The regulation was adopted in implementation of RCW 76.09.050(1) of the Forest Practices Act and parallel language at RCW 43.21C.037 of SEPA. The pertinent part of the Forest Practices Act provides:

> The [forest practices] board shall establish by rule which forest practices shall be included within each of the following classes:
>
> Class I . . .
>
> Class II . . .
>
> Class III: Forest Practices other than those contained in Class I, II or IV . . .
>
> Class IV: Forest Practices other than those contained in Class I or II: . . . d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. . . .
>
> Forest practices under Classes I, II and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.
>
> RCW 76.09.050(1) (Brackets and emphasis added.)

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[3] Department of Ecology has co-adopted subsections 1(a) and (e) of the above rule under RCW 76.09.040.

The pertinent portions of SEPA[4] provide:

> 1) Decisions pertaining to applications for Class I, II and III forest practices as defined by rule of the forest practices board under RCW 76.09.050 are not subject to the requirements of RCW 43.21C.030(2)(c) as now or hereafter amended.
> 2) . . .
> 3) Those forest practices determined by rule of the forest practices board to have a potential for a substantial impact on the environment, and thus to be Class IV practices, require an evaluation by the department of natural resources as to whether or not a detailed statement must be prepared pursuant to this chapter. . . .

RCW 43.21C.037 (Emphasis added.)

XII.

When reviewing the validity of a forest practices rule we will review to determine whether the regulation exceeds the statutory authority granted by the Forest Practices Act. Established principals governed our review. Where the legislature has specifically delegated rule-making power to an agency, the regulations are presumed valid. Weyerhaeuser Co. v. Department of Ecology, 86 Wn.2d 310 (1976). One asserting invalidity has the burden of proof, and the challenged

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4 Our jurisdiction to review the consistency of a forest practices regulation for consistency with SEPA arises not only from the Forest Practices Act's requirements regarding SEPA, but from SEPA itself. See RCW 43.21C.060 by which SEPA supplements all existing authorizations of all branches of government. See, also, review for SEPA compliance in permit appeals by the Pollution Control Hearings Board, e.g. Asarco v. Air Quality Coalition, 92 Wn.2d 685 (1979) and the Shorelines Hearings Board, e.g. Nisqually Delta Association v. DuPont, 95 Wn.2d 563 (1981).

regulations need only be reasonably consistent with the statues they implement. Weyerhaeuser, supra. However, agency rules and regulations cannot amend or change legislative enactments. State v. Rains, 87 Wn.2d 626, 631 (1976) and cases cited therein. Rules must be written within the framework and policy of the applicable statutes. State Employees v. Personnel Board, 87 Wn.2d 823, 827 (1976) and cases cited therein. An agency created by statute has only those powers expressly granted or necessarily implied from the statute. Human Rights Commission v. Cheney School District, 97 Wn.2d 118, 125 (1982) and cases cited therein.

XIII.

The Legislature has delegated to the Forest Practices Board the authority to classify forest practices relative to SEPA. However, this delegation was made with the statutory directive, underscored above, that forest practices "which have a potential for a substantial impact on the environment" shall require an evaluation by DNR as to whether or not a detailed statement must be prepared pursuant to SEPA.

XIV.

Words in a statute should be given their ordinary meaning absent ambiguity or a statutory definition. Garrison v. State Nursing Board, 87 Wn.2d 195, 196 (1976) and cases cited therein. Extrinsic aids to interpret statutory language may be considered even without a showing that the language is ambiguous. Garrison, supra. One such aid is the

dictionary, Id. The statutory phrase "potential for a substantial impact on the environment" is not ambiguous[5] nor specially defined. The key word is "substantial." Webster's Third New International Dictionary (1971) defines "substantial" as follows: "consisting of, relating to, sharing the nature of, or constituting substance: existing as or in substance: material . . . : real, true . . . : important, essential."

XV.

The language of WAC 222-16-050(1) classifies as Class IV - Special only five circumscribed forest practices as having the potential for a substantial impact on the environment. In the context of this case, we have concluded that the cumulative effects of the proposed clearcutting do not pose a potential for a substantial impact on the environment. However, the effect of WAC 222-16-050(1) is to declare conclusively that, excepting timber harvests in parks or on lands containing the breeding grounds of threatened or endangered species, no timber harvesting regardless of size, timing, soil type, slopes, elevation, equipment usage or other factors could create even

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[5] We decline to construe the Forest Practices Act language "potential for a substantial impact on the environment" by reference to points of inquiry in the Legislative Journals. Where the language of the statutes is clear and unambiguous it requires no constuction or interpretation. Thompson v. Lewis County, 92 Wn.2d 204, 207 (1979) and cases cited therein. Compare, Human Rights Commission v. Cheney School District, 97 Wn.2d 118, 121 (1982) and cases cited therein.

the potential for a substantial ("material, real, true, important, essential") impact on the environment. Such a regulation is not reasonably consistent with the Forest Practices Act or SEPA provisions cited. Rather, it is beyond the framework and policy of those statutes as set forth at RCW 76.09.050 and RCW 43.21C.037. See also RCW 76.09.010.

XVI.

Our conclusion in this regard is consistent with the Supreme Court's comment upon WAC 222-16-050 in footnote 2 of Noel v. Cole, 98 Wn.2d 375 (1982). The regulation was then materially the same as now when the Supreme Court stated:

> . . . WAC 222-16-050 defines all harvesting of timber, with minor exceptions not applicable here, as a class 3 forest practice, which SEPA itself exempts from the EIS requirement. RCW 43.21C.037. While SEPA does authorize the promulgation of administrative exemptions, they are limited to actions which are not major actions significantly affecting the quality of the environment. See RCW 43.21C.037; RCW 43.21C.110(1)(a). SEPA cannot be construed to allow the creation of general exemptions which apply regardless of environmental effect, for this would permit administrative agencies to gut the statutes. Cf. In re George, 90 Wn.2d 90, 97, 579 P.2d 354 (1978) ("administrative agency may not, by interpretation, amend or alter the statutes under which it functions"). At the least, administratively created exemptions must be construed to apply only when the particular action in question is not a major action significant - by affecting the environment. See, Downtown Traffic Planning Comm. v. Royer, 26 Wn. App. 156, 164-65, 612 P.2d 430 (1980) . . . .

Although speaking in dicta,[6] the Supreme Court's comments remain pertinent.

XVII.

Our attention has been drawn to the comments of Professor Richard L. Settle in The Washington State Environmental Policy Act (1987) at p. 78:

> "By virtue of their source, statutory exemptions are limited by their own terms and, conceivably, the constitutional equal protection requirement. Unlike adminstrative categorical exemptions which are subject to the general qualification that they may not include "major actions significantly affecting the quality of the environment," statutory exemptions immmunize the specified activities from SEPA requirements regardless of their environmental significance." (Emphasis added.)

We conclude that these comments, if considered in their full context, are supportive of the view that forest practices exemptions from SEPA must be made with regard to environmental significance. Professor Settle's comment, above, addresses in the aggregate, exemptions within SEPA for 1) specified agricultural irrigation, RCW 43.21C.035, 2) school closures, RCW 43.21C.038, 3) actions under a declared Governor's state of emergency, RCW 43.21C.210, 4) incorporation of a city or town, RCW 43.21C.220, 5) development of a housing finance

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[6] The Supreme Court resolved an action for damages which followed an unappealed decision by the Island County Superior Court that WAC 222-16-050 was invalid. Noel v. Cole, Island County Cause No. 9806, Kershner, J.

plan, RCW 43.21C.230, 6) emergency recovery from Mt. St. Helen's eruption, RCW 43.21C.500, and 7) the forest practices provision at issue, RCW 43.21C.037, cited above. Of these, none save the forest practices provision mention impact on the environment as a limitation of the exemption. Thus the conclusion drawn in the second sentence of Professor Settle's comments that "statutory exemptions immunize the specified activites from SEPA regardless of their environmental significance" must be tempered by the underscored language in the first sentence of his comments that statutory exemptions "are limited by their own terms." The terms of SEPA's forest practices exemption includes the limitation that forest practices with a potential for a substantial impact on the environment require an evaluation as to whether or not a detailed statement must be prepared pursuant to SEPA. The broad exemption of WAC 222-16-050 is administrative and not statutory.

XVIII.

The challenge to WAC 222-16-050 herein is not barred by laches, waiver or estoppel.

XIX.

The circumstances listed in WAC 222-16-050(1) as invoking the Class IV Special may properly be interpreted as those particular circumstances associated with forest practices which may be expected to occur with some frequency and which are known to be clearly capable of having a potential for substantial impact on the environment.

It certainly is not practicable nor even possible to determine in advance of every actual permit application all of the particular forest practices and associated environmental conditions that will have the potential for substantial impact on the environment. Hence any list that purports to exclusively define Class IV - Special action is inconsistent with the Forest Practices Act and SEPA.

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The challenged rule, WAC 222-16-050, purports to exempt forest practices which have a potential for a substantial impact on the environment from the statutory provisions of RCW 76.09.050(1) requiring an environmental evaluation by DNR. In this respect, WAC 222-16-050 is invalid.

XXI.

SEPA. The DNR has both the authority and the responsibility to determine for itself the compliance of a forest practices application with the classifications of the Forest Practices Act. RCW 76.09.050(5). (Text at Conclusion of Law VI, supra.) The DNR should not rely solely upon WAC 222-16-050 in making its determination, as was done here. That rule exceeds the statutory authority of RCW 76.09.050(1), and cannot be applied to determine, as a matter of law, which forest practices are Class III. From the evidence before us, however, we conclude that the proposed forest practices do not have a potential for a substantial impact on the environment and were properly classified as Class III under RCW 76.09.050(1).

XXII.

Appellants contend that the applications should have been classified "as received" with the Lake Roesiger basin included. We disagree. Separation of the Lake Roesiger basin for future consideration was not improper segmentation under SEPA rules defining a proposal. These provide that proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. WAC 197-11-060(3)(b). However, the "closely related" feature is defined to require that proposals:

> 1) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
> 2) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation. WAC 197-11-060(3)(b).

Neither of the above is descriptive of the proposed logging inside versus outside the Lake Roesiger basin as stated in the these applications. Rather, the proposed logging outside the basin can occur independently of that proposed inside the basin. This distinguishes the facts here, also, from Merkle v. Port of Brownsville, 8 Wn. App. 844 (1973). Compare Seattle Audubon Society, et al. v. Department of Natural Resources and Scott Paper Company, FPAB No. 87-5 (1989). Unlike Owens, et al. v. Department of Natural Resources and Chamberlain Farms, FPAB No. 87-6 (1988) we see no

coercive effect that the approved logging would have on the future consideration of logging inside the basin. Consideration of the applications exclusive of the Lake Roesiger basin was proper under SEPA.

XXIII.

Appellants next contend that the identification of "priority" issues under the TFW agreement is tantamount to classifying the applications as Class IV applications with potential for a substantial impact on the environment. We disagree here, also. Although the classifications of the Forest Practice Act pre-date TFW, we see no compelling reason why the TFW process cannot aid in DNR's determination of whether an application has a potential for a substantial impact on the environment. The ID Team approach of TFW is consistent with SEPA's directive to use a systematic, interdisciplinary approach. RCW 43.21C. 030(2)(a). While we do not conclude that TFW procedure is a substitute for SEPA evaluation, it can serve as an indicator of whether that evaluation is required.

XXIV.

Lastly, appellants contend that applications should be classified with regard to the cumulative effects of past, present, and foreseeable future applications with similar impacts. We agree with this in part. First, the term "impact" is defined under WAC 197-11-752 of the SEPA rules as "the effects or consequences of

actions . . . ". See also WAC 197-11-060(4)(e) specifying cumulative impacts. The impact of these proposed operations on water quality, wildlife and other elements of the environment should be asessed in light of previous forest operations. The "effects or consequences of actions" proposed in present applicatons may intensify when added to actions already approved. Nothing in SEPA or the Forest Practices Act compels DNR to consider the forest practice application in isolation from previously approved applications in the same vicinity. The conclusion which we reach that these applications do not have a potential for a substantial impact on the environment is made with consideration of the cumulative effect of these and past forest practices approvals. We do not, however, deem it appropriate for DNR to assess future applications not yet filed when evaluating present applications. "A proposal exists when an agency is presented with an application . . . " WAC 197-11-055(2)(a).

XXV.

The DNR's classification of these applications as Class III exempts them from the requirements for preparation of a detailed statement under SEPA. RCW 76.09.050(1). This excludes also the threshold determination requirement. Id. and Settle, supra, at p. 78 (last paragraph). SEPA may have a supplemental substantive effect in approval or denial of forest practices applications. See, e.g. RCW 43.21C.060. However, we do not find these approvals lacking in that respect. We conclude that DNR's approval of these applications was

consistent with SEPA.

XXVI.

Forest Practices Act. Appellant, Washington Environmental Council, contends that the conditions of these approvals are inadequate and unenforceable. We hold the conditions to be adequate, and therefore turn to whether they are enforceable. An issue arises here as to conditions not directly based upon forest practices regulations, but necessary to protect public resources in the context of this specific site. Public resources are defined to include water, fish, wildlife and capital improvements of the state or its political subdivisions. RCW 76.09.020(13). The DNR may, even after approving applications, issue regulatory orders to avoid "material damage to a public resource." RCW 76.09.080(1)(C) and RCW 76.09.090. In this respect, DNR urges:

> . . . In essence, these provisions grant the Department authority to impose more stringent requirements than those in the regulations if the DNR determines they are necessary to prevent material damage to a public resource. This is a recognition by the legislature and the FPB that regulations cannot anticipate every site-specific situation, and that there may exist unique or unusual situations, not contemplated by the FPB where the regulations alone are insufficient to prevent material damage to public resources.
>
> DNR has interpreted the authority to require more stringent conditions after the forest practice has commenced as impliedly granting it the authority to place those same conditions initially on the application where DNR knows in advance of the potential for material damage to a public resource that will not be adequately mitigated by the regulations. . . . (Emphasis in original.) Pre-Hearing Brief of DNR, pages 42-43.

We agree. The DNR has authority to prescribe site-specific, preventive conditions to a forest practices approval which are necessary to prevent material damage to a public resource. In this case, certain conditions go farther than the forest practices regulations literally prescribe. These were set with cooperation from the applicants. Yet under the authority of DNR to protect against material damage to a public resource, we hold each of the conditions of these approvals to be enforceable under the Forest Practices Act.

XXVII.

Our conclusions pertinent to SEPA concerning the separation of the Lake Roesiger basin (Conclusion of Law XXII, supra), the utility of the TFW process (Conclusion of Law XXIII, supra) and cumulative impacts (Conclusion of Law XXIV, supra), apply also to DNR's application of the Forest Practices Act. We conclude that DNR's approval of these applications was consistent with the Forest Practices Act and forest practices regulations.

XXXII.

In summary, the forest practices approvals, as conditioned, do not have a potential for a substantial impact on the environment nor for material damage to a public resource, and are consistent with SEPA, the Forest Practices Act and forest practices regulations, except for reliance upon WAC 222-16-050 which exceeds statutory authority.

XXXIII.

Any Finding of Fact which is deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this

ORDER

The approval by Department of Natural Resources of the forest practices applications of Golden Spring International, Inc., and TAT (USA) Corporation is hereby affirmed.

DONE at Lacey, WA, this 13th day of November, 1989.

FOREST PRACTICES APPEALS BOARD

NORMAN L. WINN, Chairman

CLAUDIA K. CRAIG, Member

DR. MARTIN R. KAATZ, Member

WILLIAM A. HARRISON
Administrative Appeals Judge

CONCURRING OPINION

CONCURRING OPINION

This appeal raises a number of important issues of public policy which are likely to be raised in future appeals and also in dealings between applicants, concerned citizens, and the Department of Natural Resources (DNR). This concurring opinion will amplify and expand on some of the findings set forth in our Order.

The lands in question are low elevation timber lands classified site 1 and site 2 lands. The soils are fertile and well drained. There are many existing logging roads in place and little additional road construction is required for further harvesting. The Board noted on its field trip that there is very rapid regeneration on adjacent clear cuts. Testimony during the hearing indicated that these lands will be replanted during the next planting season in 1990, and that it is likely that the new trees will be about 6 feet high in five years. After ten years, the trees will be about 15 feet high. The terrain is gently rolling, and testimony at the hearing indicated that there was little probability of soil erosion.

These factors are important in the Board's consideration of the issues raised in this appeal. The lands under consideration are some of the best timber growing lands in the state. The economic viability of the timber industry is dependent upon maintaining an adequate timber base. The state and the county derive significant tax revenues from timber harvesting activities, and substantial employment results from the timber industry and the secondary effects of timber harvesting in the local economy.

If the timber industry is to remain economically healthy, it is important that highly productive, low elevation sites currently in timber production be available for harvesting, replanting, and future timber production. Much of the land which is remote from population centers is in the higher elevation areas in the mountains where timber growing conditions are much less favorable and environmental concerns are much more acute. Both the Forest Practices Board and the Department of Natural Resources recognize that there are important social concerns which result from logging in areas which are becoming urbanized. This Board shares those concerns. Both the Forest Practices Board and the Department of Natural Resources have ongoing studies which address some of the significant issues raised in this appeal.

The testimony during the hearing establishes that both TAT and GSI have gone to considerable lengths to address and mitigate environmental concerns raised by citizens living around Lake Roesiger. Both GSI and TAT will use a "feller-buncher" which utilizes large, low inflation rubber tires. This equipment represents a very significant capital expense, in excess of one million dollars. Testimony during the hearing indicated that one of the logging contractors had purchased this equipment specifically for these harvest applications. Testimony at the hearing indicated that this equipment results in the likelihood of significantly less soil compaction and other environmental problems compared to the use of

more traditional logging equipment.

Both GSI and TAT have voluntarily agreed to general and special conditions on their permits which are much more stringent than conditions normally imposed. One witness testified that these were the most stringent conditions ever imposed in the state of Washington. There was testimony that compliance with these conditions will result in economic loss to the companies, although no specific dollar figure was mentioned. Foresters for GSI and TAT worked with the DNR in arriving at these conditions, and both GSI and TAT voluntarily agreed to the stringent conditions. The applicants' acceptance of these conditions was probably motivated in considerable part by the intense public scrutiny and public controversy over these harvest applications. Nevertheless, we personally believe that GSI and TAT are to be commended for voluntarily agreeing to these stringent conditions.

Both GSI and TAT participated in a Timber/Fish/Wildlife review with the Department of Ecology, the Department of Wildlife, the Department of Fisheries, and Indian tribes. The comments of these experts were considered by the DNR in reviewing the applications and drafting the conditions. The applicants granted DNR two time extentions so that the conditions could be adequately addressed. Members of the public living in the vicinity of Lake Roesiger also participated in one field trip to look at some of the sites. GSI gave Snohomish County permission to go on its property after this appeal

was filed to obtain further information in preparation for the appeal.

This Board recognizes that the TFW process is a voluntary process. GSI and TAT had very recently purchased this property in Snohomish County and had no history of participation in the TFW process. Both applicants are to be commended for participating in the TFW process and consenting to the stringent conditions on the applications which resulted, in part, from that TFW process.

The TFW process is the result of long and often difficult negotiations between environmental organizations, timber organizations, state agencies, and Indian tribes. All those parties believed that the process of handling disputes over logging practices through administrative appeals and Superior Court litigation was not the most efficient method of resolving environmental concerns. The TFW process is intended to bring an interdisciplinary approach to specific environmental concerns in connection with specific harvest applications. Often the TFW approach will result in additional expertise being available to the DNR and a better result achieved in terms of environmental protection. We believe that the TFW approach is an important and practical method of resolving environmental concerns, short of adversary proceedings. If applicants go through the TFW process and are then faced with adversary proceedings, applicants have less incentive to particpte in the TFW process. Additionally, we recognize and encourage efforts of the TFW participants, the DNR, and the Forest Practices Board to include

counties, local citizen groups, landowners and other parties not involved in the original TFW agreement to become a part of the process.

It is significant that representatives of the Deprtment of Ecology, Department of Wildlife, and Department of Fisheries who have participted in the TFW process testified at the hearing. Some of those experts had concerns over the cumulative impacts of these timber sales. However, each of them testified that their concerns as to these particular sales were adequately addressed through the TFW process and the conditions that were imposed on the harvest applications. We were impressed with the knowledge and candor of these witnesses. They are to be commended for their desire to protect the environment and the public resources which are the particular responsibility of their respetive agencies.

Several representatives of the DNR testified at the hearing. It is clear that these applications received an unprecedented level of review within the Department. Commissioner Boyle met with the Snohomish County Council to discuss concerns raised by the Council and residents living near Lake Roesiger. Commissioner Boyle informed the County Council that many of the issues raised were the subject of ongoing studies by the Forest Practices Board and the DNR and that he had requested an accelerated work program to complete those studies. These studies include cumulative impacts of logging, size of clearcuts, and logging in urbanized areas.

We find it significant and encouraging that the DNR imposed conditions beyond the literal requirements of the Forest Practice Regulations. Several employees of the DNR testified that they believed that they had authority to impose additional conditions where necessary to protect public resources. We agree with this position and believe it is fully consistent with and even mandated by the Forest Practices Act and the State Environmental Policy Act.

The Forest Practices Appeals Board has ruled that the State Environmental Policy Act does apply to forest practices other than the limited number of practices enumerated in WAC 222-15-050. The Forest Practices Act provides in RCW 43.21C.037 that Class IV Special forest practices requiring compliance with SEPA includes any forest practices "which have a potential for a substantial impact on the environment." We forcefully reject the interpretation that only the five practices listed in WAC 222-16-050 have a potential for substantial impact on the environment. Clearly, there are numerous other forest practices which, depending upon the terrain, the equipment used, soil conditions, and other factors, could have substantial impact on the environment. The Forest Practices Board has extensively studied other forest practices in 1979-80. That work need not be repeated because we believe that no list can be exclusive.

Snohomish County has persuasively argued in its brief that SEPA is an environmental statute which provides an overlay which compliments other statutory regulations. We agree. Numerous cases

stress the strong public policy of the state to protect the environment. This public policy applies to timber harvesting as well as normal construction activities.

Based upon the specific facts of this case, we concur with the Board's decision that an environmental impact statement was not required in connection with these harvest applications. We emphasize that this harvesting occurs on low elevation site 1 lands in gentle terrain, with very little new road construction required. All of the agency personnel agreed that the stringent conditions imposed on the applications were adequate to prevent or mitigate environmental concerns. We emphasize these facts because we believe that somewhat different facts on future applications may well require preparation of an E.I.S. or other SEPA procedures. We would encourage the DNR to supplement the SEPA checklist pursuant to WAC 197-11-335 to elicit additional information more pertinent to forest practices. In that connection, the scoping process and preparation of a mitigated DNS may be an efficient process to achieve SEPA compliance.

With these additional comments, we concur in the foregoing decision.

DONE at Lacey, WA, this 13th day of November, 1989.

NORMAN L. WINN, Chairman

CLAUDIA K. CRAIG, Member

DR. MARTIN R. KAATZ, Member